

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

W.P.(C).No.9343 of 2006(K)

PETITIONER:-

T.PURUSHOTHAMAN,
DRIVER, KANNUR DISTRICT CO-OPERATIVE BANK, KANNUR.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:-

1. KANNUR DISTRICT CO-OPERATIVE BANK,
KANNUR, REP. BY ITS GENERAL MANAGER.
2. THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (GENERAL),
KANNUR (ARBITRATOR).
3. THE KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM.
4. SHAJI.V.J,
S/O.JOSEPH, PEON, KANNUR DISTRICT CO-OP. BANK,
KANNUR.

R1 BY ADVOCATE SRI.K.M.MOHAMMED KUNHI.

R2 BY SENIOR GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN.

R4 BY ADV. SRI.M.RAMESH CHANDER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF PROCEEDINGS DATED 30.10.1999.

EXT.P2 - TRUE COPY OF PROCEEDINGS DATED 26.6.2001 RE-APPOINTING
THE PETITIONER TO THE POST OF DRIVER.

EXT.P3 - TRUE COPY OF REQUEST FROM 4TH RESPONDENT TO THE GENERAL
MANAGER OF THE BANK DATED 20.7.2001.

EXT.P4 - TRUE COPY OF RECRUITMENT RULES FOR THE DISTRICT
CO-OPERATIVE BANKS 1998.

EXT.P5 - TRUE COPY OF PLAINT IN THE ARBITRATION CASE NO.2/2002.

EXT.P6 - TRUE COPY OF WRITTEN STATEMENT FILED BY THE PETITIONER
HEREIN, THE SECOND DEFENDANT IN A.R.C.2/2002.

EXT.P7 - TRUE COPY OF ORDER IN A.R.C.2/2002.

EXT.P8 - TRUE COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE TRIBUNAL.

EXT.P9 - TRUE COPY OF JUDGMENT IN O.P.10017/2003 DATED 15.10.2003.

EXT.P10 - TRUE COPY OF INTERIM ORDER DATED 20TH DECEMBER 2003 OF THE
CO-OPERATIVE TRIBUNAL.

EXT.P11 - TRUE COPY OF JUDGMENT DATED 24.10.2005 IN A.R.C.NO.124/2003
OF THE KERALA CO-OPERATIVE TRIBUNAL.

RESPONDENT'S EXHIBITS: NIL.

- TRUE COPY -

K.Padmanabhan Nair,J.

W.P.(C).No.9343 of 2006-K

Dated, this the 19th day of February, 2007

JUDGMENT

The petitioner was working as a Driver in the District Co-operative Bank, Wayanad. Disciplinary action was initiated against him alleging misconduct and he was reverted to the post of Peon as per order dated 26.10.1996. Subsequently, as per his request he was transferred as a Peon to the District Co-operative Bank, Kannur on 30.10.1999 under Exhibit P1 order. The petitioner was working as Peon in the Kannur District Co-operative Bank with effect from 1.11.1999 onwards.

2. On 24.5.2001, the petitioner filed a review petition before Kannur District Co-operative Bank praying that the order of reversion passed by the District Co-operative Bank, Wayanad. On 26.10.26.6.2001, the Board of Directors of Kannur District Co-operative Bank took a decision to review the order passed by Wayanad District Co-operative Bank on 26.10.1996. That decision is perverse, illegal and far beyond the jurisdiction of the Bank. A reading of Exhibit P2 order itself will show that absolutely no reason whatsoever is stated in Exhibit P2 by the Kannur Bank

to review the order.

3. The petitioner was reverted to the post of Peon in pursuance of a disciplinary action initiated against him under Rule 198 of the Kerala Co-operative Societies Rules. Such an order is appealable under sub-rule (5) of Rule 198. There is no provision to review that order by the authority who passed the same. There is absolutely nothing on record to show that the filed any appeal against the order reverting him.

4. The 4th respondent challenged Ext.P2 order before the Joint Registrar. The Joint Registrar after considering the case on its merits, rescinded the resolution passed by the Bank to appoint the petitioner as a Driver. Aggrieved by that order, the petitioner filed A.P.No.124 of 2003 before the Kerala Co-operative Tribunal. The Tribunal elaborately considered the matter and confirmed the order passed by the Joint Registrar. Challenging those decisions, the petitioner has filed this writ petition.

5. The main ground raised by the petitioner is that after the amendment of Section 69 of the Kerala Co-operative Societies Act, hereinafter referred to as 'the Act', the Joint Registrar has no jurisdiction to decide a non-monetary dispute

and all such cases are to be decided by the Arbitration Court. It is also contended that all the pending matters are to be transferred to the Arbitration Court. It is contended that in the case at hand, A.R.C. was filed in the year 2001 and hence the proceedings ought to have been transferred to Arbitration Court. It is also contended that it is not a promotion, but a post to be filled up by direct recruitment, for which the Society had every authority and as such the Joint Registrar as well as the Co-operative Tribunal went wrong in setting aside that order.

6. In **Poonjar Service Co-operative Bank Ltd. v. State of Kerala** (2004 [1] KLT SN 40 [Case No.50]), a learned Single Judge of this Court took the view that even after the amendment the Joint Registrar has got power to deal with the matter if it is a matter covered by the provisions of Rule 176 of the Rules. In **Parappuram Milk Producer's Co-operative Society v. Deputy Director, Dept. of Dairy Development** (1999 [1] KLT 121) a Division Bench of this Court considered the power of the Registrar and held that if the impugned order is ultra vires or against the provisions of the Act, Rules or Bye-laws, the Registrar has got jurisdiction to entertain an appeal under Section 69 of the Act. In **Prakasini v. Joint Registrar** (2006 [1]

KLT 199), a learned Single Judge of this Court considered the matter and held that in certain circumstances alone the Registrar can exercise the power. The correctness of that decision was considered in **Gopakumar S.V. v. Sajikumar** (2007 [1] ILR Kerala 391) by a Division Bench of this Court. It was held that Registrar can rescind any resolution of any Society or Committee of any Society if it appears that such resolution is ultra vires the objects of the Society, or is against the provisions of the Act, Rules and By-laws of the Society. The contention raised by the 4th respondent was that the petitioner is a person who was found guilty and reverted as a Peon and after getting a transfer he managed to get that order reviewed after the lapse of five years and managed to get an order passed posting him as Driver. The specific case put forward by the 4th respondent is that the order passed by the Bank is in utter disregard to the Rules regarding disciplinary action. It is contended that appeal period was over and the Kannur District Co-operative Bank has no power to review an order passed by Wayanad Bank. Since there is allegation regarding violation of Rules, the Joint Registrar has every power to deal such a matter.

7. The petitioner was working as a Driver in Wayanad District. Disciplinary action was initiated against him and he was reverted. He was transferred to Kannur District under the inter-district transfer scheme. He is the junior-most among the Peons. It is seen that as per Exhibit P2 the Bank re-appointed him as a Driver. So, the Bank reviewed a decision taken by the disciplinary authority in the year 1996, for which it has no power at all. That decision was based on a request made by the petitioner. The Joint Registrar as well as the Co-operative Tribunal have considered all aspects in detail and held that the act of the Bank in re-appointing the petitioner as a Driver is illegal and actuated by mala fides. I do not find any reason to interfere with that finding of fact.

8. It is argued that the post of Driver is not a promotion post of Peon and as such the authorities below went wrong in directing the 1st respondent to appoint 4th respondent as Driver. The petitioner has no case that he was appointed after inviting application, etc. The Registrar as well as the Tribunal found that the 1st respondent did not circulate impugned order and that order was passed behind the back of other employees.

9. The Tribunal in its order has stated that as per the feeder category Rules applicable to the employees of the 1st respondent-Bank, Peon is included in the feeder category of Drivers. In paragraph 6 of the Order passed by the Tribunal, it is stated that ordinarily recruitment to post of Driver shall be made by direct recruitment, but Peon is included in the feeder category of promotion to the post of Driver. The first respondent-Bank has not challenged the order. The petitioner has no *locus standi* to challenge the direction of the authorities below to promote the 4th respondent as he is no way affected by that part of the order. So, there is no merit in the contention that 4th respondent ought not have been posted as Driver. Further, if the orders passed by the authorities are set aside, an illegal and perverse decision taken by the 1st respondent-Bank will revive. So, the writ petition is only to be dismissed.

In the result, the writ petition is dismissed.

I.A.No.12997 of 2006 also shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-